

Public Relations Law

Legal Considerations in Generative AI

Over the last several months, new developments in **generative artificial intelligence (AI)** technologies have been emerging at breakneck speed.

These new technologies, built on machine learning algorithms, have the potential to fundamentally transform many aspects of the communications and marketing industry. It is more important than ever for firms to have an understanding of the legal and practical risks presented by these new technologies, in order to determine whether and how to adopt them as a business tool.

Intellectual Property Law

Copyright Infringement

- AI-generated content may infringe the copyright in a pre-existing work if the AI training data includes the pre-existing copyrighted work and if the output generated by the AI platform is substantially similar to the protectable expression in the pre-existing copyrighted work.
- A user's input prompt asking for output in the "style" of an existing, copyrighted work or a particular artist may potentially result in copyright infringement.

Trademark Infringement

- AI-generated content may infringe upon third-party trademarks (including logos, brand names, slogans, distinctive products, etc.) if they are incorporated in the platform's output (even if distorted).
- As with traditional content production, materials should not be used publicly if they include third-party trademarks without authorization.
- If AI is being used to generate a new logo, slogan, or other trademark, an appropriate trademark clearance process should be conducted to determine if the newly generated trademark is available for use.

Rights of Publicity Violations

- AI-generated content can violate an individual's right of publicity if it identifies or depicts that individual. When using AI to generate content showing people, there is a risk that a viewer or consumer may recognize themselves in the AI-generated image and claim that their rights were violated.
- If AI-generated output resembles a celebrity, there is a greater risk in using that output publicly, even without any intention to generate a celebrity look-alike.

Contractual Issues

- Review the relevant AI platform's terms of use in advance and understand the scope of the rights the platform gives to its users.
- Firms may need to adjust client contracts to account for limitations or restrictions around ownership of AI-generated material, and the potential that AI-generated material may infringe upon third-party rights.
- Firms working with vendors to develop AI-generated material should ensure that, to the extent possible, the vendor agreements grant the firm and client necessary ownership rights and intellectual property protections relating to the generated output.
- Generative AI technologies, including deepfake technologies, should not be used to circumvent talent agreements. Talent agreements should be reviewed in detail, and SAG implications considered (if applicable), before assuming that it is acceptable to modify a person's performance using AI technology.

Business Considerations

- Consider whether, and how, the firm (or its client) wants to utilize generative AI technologies as a matter of policy.
- Remain mindful of overarching limitations and concerns that generative AI can present:

False Information: Many models understand argument structure, but produce fake or misleading sources or examples.

Bias: A model is only as good as its training data. Bias found on the internet can show up in results, such as a prompt for a "CEO" that produces only white men.

No Confidentiality: Be aware that inputs submitted on AI platforms, and the resulting outputs produced, are typically fed back into the algorithm to continue improving the technology. As a result, confidential information or personal data should not be included when creating a prompt to generate AI content, as this information could be incorporated into an output generated for another user.

- Be transparent with clients about a firm's decision to use AI-generated content, particularly for public-facing materials.

Best Practices

1. Make sure the AI platform's terms of service allow for the commercial use of output images.
2. Use generic prompts for style descriptors.
3. Don't include references to preexisting copyrighted works, trademarks or individual names in the prompts.
4. Don't use the name of an individual as a text prompt, unless you have rights to that person.
5. Don't upload preexisting references unless the client/firm owns or controls the rights in those references.
6. Don't upload or otherwise include confidential information or personal data in a prompt.
7. Conduct additional clearances and reverse-image searches to assess the likelihood that the AI-generated output is infringing.



Remember

This technology, and resulting legal and practical issues, are evolving on a near-daily basis! Always consult with legal counsel when considering incorporating AI into a business tool or a client deliverable.

For More Information

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